

PS&G shall comply with all applicable federal, state, and local laws and regulations. PS&G shall be responsible for obtaining all federal, state and/or local permits which are necessary to perform any work required by this Consent Decree.

38. If PS&G fails to comply with the provisions of Section VI, Plaintiff may seek appropriate relief, including but not limited to contempt or injunctive relief from this Court to require compliance with the terms of this Consent Decree.

VII. RIGHT OF ENTRY

39. For the duration of this Consent Decree EPA and/or State or local air pollution control agency inspectors or representatives may enter on, about and through the Facility and site to determine Defendant's compliance with the requirements of the Consent Decree. This right of access is not a limitation on the rights of access afforded by the Act or any other statute, regulation or law.

VIII. STIPULATED PENALTIES

40. PS&G shall be liable for stipulated penalties according to the provisions set forth in the following subparagraphs:

a) For failure to submit any report required in Section VI, above, PS&G agrees to pay a stipulated penalty of \$250 per day for each of the first five days the violation

continues until the report is submitted.

b) If any report is more than five days late, PS&G shall pay stipulated a stipulated penalty of \$400 per day for the sixth through the tenth day.

c) Thereafter, and continuing until the report is submitted, PS&G shall pay a stipulated penalty of \$750 per day.

d) For failure to complete construction of the Enclosure for the truck Dump-Pit PS&G shall pay a stipulated penalty of \$1000 per day until completion.

e) For failure to conduct either the initial evaluation of baghouse performance for the Enclosure, or failure to conduct any of the quarterly baghouse maintenance checks within the first 7 days of each applicable quarter, as required by the Consent Decree, PS&G shall pay a stipulated penalty of \$250 for the first 5 days, \$400 for the next 5 days, and \$750 per day thereafter until completed.

41. Stipulated penalties herein shall be in addition to other remedies or sanctions available to the United States by reason of PS&G's failure to comply with the requirements of this Consent Decree or the Clean Air Act.

42. Stipulated penalties pursuant to paragraph 40 above, shall begin to accrue on the day after performance is due, and

shall continue to accrue through the final day of correction of the noncompliance or completion of the obligation. The United States shall make reasonable efforts to promptly notify Defendant of any alleged violation of this Consent Decree after it determines that such violations would warrant stipulated penalties. However, penalties shall accrue as provided in the preceding paragraph regardless of whether EPA has notified the Defendant of a violation. Stipulated penalties shall not accrue with respect to: 1) a decision by the Chief of the Air Enforcement and Compliance Assurance Branch, U.S. EPA, Region V under ¶43, during the period, if any, beginning on the 31st day after the Defendant's response to EPA's imposition of stipulated penalties is received, until the date the Chief makes a determination regarding such dispute; and 2) judicial review by this Court of any dispute under paragraph 43, during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

43. Any stipulated penalties incurred by PS&G shall be paid by certified check made payable to the "Treasurer of the United

States," within fifteen (15) days of receipt of written demand by the Chief of the Air Enforcement and Compliance Assurance Branch U.S. EPA, Region V for such penalties (or equivalent supervisor in the event of reorganization), and are to be tendered to the United States Attorney for the Western District of Wisconsin at the following address:

United States Attorney
660 W. Washington Avenue, Suite 200
P.O. Box 1585
Madison, WI 53701-1585

The case name, file number (No. 98-C-0586-S, and DOJ No. 90-5-2-1-2218) shall be clearly noted on the check. Notice of payment of stipulated penalties shall be made to the EPA and U.S. DOJ and shall be in accordance with the procedures set forth in paragraph 52, below. PS&G shall pay interest as set forth in paragraph 22, above, for any delinquent payments of stipulated penalties. PS&G may contest the basis for imposition of stipulated penalties demanded by EPA in writing, by first requesting an informal meeting with the Chief, Air Enforcement and Compliance Assurance Branch of U.S. EPA, Region V. Thereafter, PS&G may petition to the Court for a hearing to resolve the dispute. In any such proceeding PS&G shall have the burden of rebutting the allegation made by EPA that the Consent Decree has been violated.

44. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

IX. GENERAL

45. Resolution; Non-Waiver. This Consent Decree shall resolve between the United States and Defendant (including Blair Dillman, President, in his personal capacity), in full satisfaction and settlement: (1) any and all civil claims for violations alleged in the Complaint relating to the PS&G Facility and occurring prior to the date of lodging of this Consent Decree; and (2) any and all civil claims under the Clean Air Act or the Wisconsin SIP for operation of a temporary grain transfer station at the Facility during November 1995, or arising from the November 7, 1996, WDNR inspection of the Facility. This Consent Decree does not settle any matters other than those expressly specified herein. The United States reserves, and this Consent Decree is without prejudice to, all rights against PS&G with respect to all other matters. The United States expressly reserves, and this Consent Decree specifically does not settle any liability for criminal violations. Except as specifically provided in this Consent Decree, nothing contained herein shall

in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, either judicial or administrative, under the Act, 42 U.S.C. § 7401 et seq., or any other provision of law, against PS&G or against any other person or entity not a party to this Consent Decree. Nothing in this Consent Decree shall be construed to be a permit. PS&G shall be responsible for achieving and maintaining compliance with all federal, state, and local environmental laws, regulations, and permits applicable to the grain transfer operations.

46. Costs of Suit. Each party shall bear its own costs and attorney fees in this action.

47. Modification. There shall be no modification of this Consent Decree without written approval by both parties to this Consent Decree and the Court.

48. Closure of Facility. In the event of a closure of the Facility for more than 90 consecutive days between the months of March and December, the terms and conditions of this Consent Decree, other than the terms of Sections III, IV and V, shall be held in abeyance and termination of this Consent Decree shall be tolled. In the event of closure of the Facility, Defendant shall be required to provide EPA with prior written notice stating the

dates it will be closed, providing the reasons for the closure, and its intent, if any, to reopen.

49. Force Majeure. Force majeure, for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force majeure" does not include financial inability to comply with any portion of this Consent Decree.

50. Authorizations. The undersigned representatives of each party to this Consent Decree certify that they are fully authorized by the party whom he or she represents, to enter into the terms and conditions of this Consent Decree and to execute and legally bind that party to the Consent Decree.

51. No Admission. PS&G makes no admission of any fact or

law beyond that which is asserted in the Answer to the Complaint, and by entering into this Consent Decree does not admit that the law has been violated.

X. NOTICES AND SUBMISSIONS

52. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed by certified mail to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and PS&G, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Re: DJ# 90-5-2-1-2218

As to EPA:

David Mucha
Associate Regional Counsel (C-14J)
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

As to Defendant:

Mr. Blair Dillman
Prairie Sand and Gravel, Inc.
800 North Villa Louis Road
Prairie du Chien, Wisconsin 53821
Fax (608) 326 - 8955

Charles N. Nauen
Lockridge, Grindal, Nauen & Holstein P.L.L.P.
Suite 2200
100 Washington Avenue South
Minneapolis, Minnesota 55401
Fax: (612) 339 - 0981

As to WDNR:

Cory Carter
Air Management Specialist
3448 State Hwy 23
Dodgeville, Wisconsin 53533-9502

XI. PUBLIC COMMENT

53. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments.

54. PS&G shall not withdraw its consent to this Consent Decree, and hereby consents to its entry without any modifications.

XII. TERMINATION AND RETENTION OF JURISDICTION

55. This Consent Decree shall be terminated upon motion by either party after two years of operation from the date of entry of the Consent Decree provided that Defendant has satisfied all requirements of the Consent Decree including payment of all penalties (including stipulated penalties) and provided that Defendant is in compliance with the Act. The United States may oppose a motion by Defendant and any such opposition shall be resolved by the Court. Until such termination, this Court retains jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree.

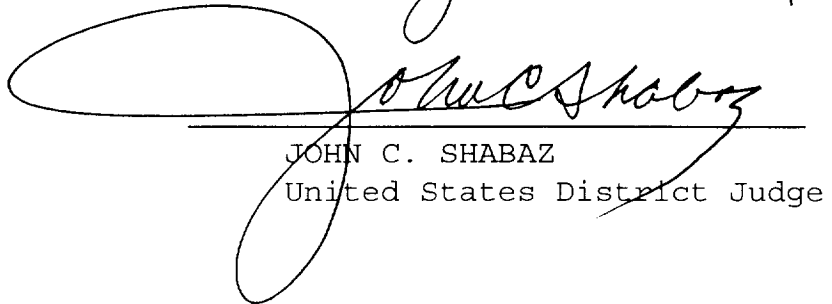
56. The following agent of the Defendant is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree:

Mr. Blair Dillman
Prairie Sand and Gravel, Inc.
800 North Villa Louis Road
Prairie du Chien, Wisconsin 53821
Fax (608) 326-8955

57. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of

the agreement may not be used as evidence in any litigation
between the parties.

SO ORDERED THIS 4th DAY OF June, 1999.



JOHN C. SHABAZ
United States District Judge

United States of America v. Prairie Sand & Gravel, Inc.
Case No. 98-C-0586-S

FOR PRAIRIE SAND & GRAVEL, INC.:

Dated: 3/18/99


BLAIR DILLMAN

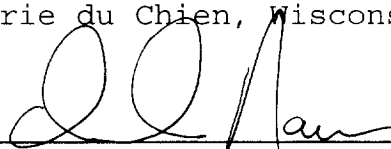
President

Prairie Sand and Gravel, Inc.

800 North Villa Louis Road

Prairie du Chien, Wisconsin 53821

Dated: 3/16/99


CHARLES N. NAUEN

Lockridge Grindal Nauen & Holstein PLLP
Suite 2200

100 Washington Avenue South

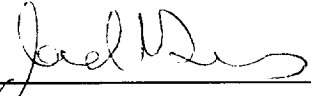
Minneapolis, Minnesota 55401

Counsel for the Defendant

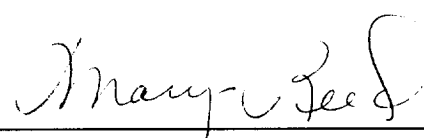
United States of America v. Prairie Sand & Gravel, Inc.
Case No. 98-C-0586-S

FOR THE UNITED STATES OF AMERICA,
Plaintiff

Dated: 3-28-99


JOEL M. GROSS
Chief, Environmental Enforcement
Section
Environment and Natural Resources
Division
United States Department of Justice

Dated: 3-29-99


MARY REED, Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044
(202) 514-2580

PEGGY A. LAUTENSCHLAGER
United States Attorney
Western District of Wisconsin

Dated: 3/30/99

By: 

LESLIE K. HERJE
Assistant U.S. Attorney
660 West Washington Ave. Suite 200
P.O. BOX 1585
Madison, Wisconsin 53701-1585
(608) 264-5158

United States of America v. Prairie Sand & Gravel, Inc.
Case No. 98-C-0586-S

Dated: 3/24/99

for Karl E. Bumer

DAVID A. ULLRICH
Acting Regional Administrator
United States Environmental
Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Dated: 3/18/99

David P. Mucha

DAVID P. MUCHA
Associate Regional Counsel
United States Environmental
Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604